

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MATTHEW HUBAKER,)	CASE NO. 1:08 CV 1106
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
JEFFREY WOLFE,)	<u>AND ORDER</u>
)	
Respondent.)	

On May 1, 2008, petitioner pro se Matthew Hubaker, an inmate at the Noble Correctional Institution, filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. The petition and attachments indicate Hubaker challenges his convictions, pursuant to an August 27, 2007 guilty plea, of aggravated arson and felonious assault. For the reasons stated below, the petition is denied and this action is dismissed.

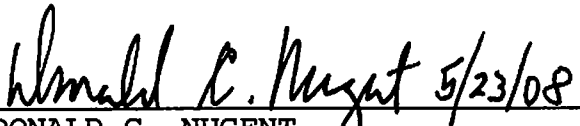
A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for the petition, Hubaker asserts he was denied the effective assistance of counsel and his Miranda rights,

and that his sentence and conviction were illegal. It is apparent of the face of the petition that he has an appeal pending in the Ohio Court of Appeals, wherein these grounds are at issue. Thus, without regard to the potential merits of the grounds sought to be raised herein, the petition is obviously premature.

Accordingly, the request to proceed in forma pauperis is granted and this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.


DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE